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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/025,214

12/18/2001

Michael John Niemeyer

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EXAMINER

COLE, ELIZABETH M

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/025,214

Applicant(s)

NIEMEYER ET AL.

Examiner

Elizabeth M Cole

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-6, 8, 10-11, 16, 19-21, 23, 24-25, 27, 29, 30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Putzier, U.S. Patent No. 5,262,218. Putzier discloses an absorbent material comprising an absorbent core which may comprise pulp and superabsorbent particles, (col. 3, lines 46-58, col. 4, lines 20-44), a complete wrapper which encompasses the absorbent core which comprises a fibrous material such as a cotton-type material, (col. 4, line 65 – col. 5, line 10), and a binder material for stabilizing the wrapper, (col. 2, line 48). Figure 2 shows that the wrapper overlaps itself at the bottom portion of the absorbent article. Although Putzier does not disclose the amount of absorbency which is contributed to the absorbent material by the wrapper, it is reasonable to presume that the Putzier material would meet the limitations of the claims. Support for this presumption is found in the fact that Putzier employs the same materials and because plant-based fibers such as cotton are well known as being absorbent. In the alternative, it would have been obvious to one of ordinary skill in the art at the time the invention

was made to have selected the thicknesses and relative proportions of the components in order to arrive at a material having the desired absorbency through the process of routine experimentation. With regard to the limitation that the wrapper comprises a mixture of absorbent material and binder, since the wrapper comprises both elements, it would inherently comprise a mixture of the two.

4. Claims 1-14, 16-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/17695 to Everett et al in view of GB 1,231,648. Everett et al discloses an absorbent material which comprises an absorbent core which may be zoned to have different levels of absorbency, and which may further comprise binders and superabsorbent materials. See page 20, lines 1-15, 26-33 and page 21. Everett et al teaches that the absorbent core may be encased in a wrapper which preferably comprises an absorbent material. See pages 23-25. Everett et al differs from the claimed invention because Everett et al does not specifically teach that the wrapper comprises a binder, and does not disclose the amount of absorbency which is contributed to the absorbent material by the wrapper. With regard to the binder, Everett et al teaches that absorbent tissue may be used as the wrapper material. GB '648 teaches that non-irritating binders may be applied to tissues which are incorporated into absorbent articles such as diapers in order to enhance the strength of the tissues. See col. 3, lines 22-42. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed a binder as taught by GB '648 with the wrapper of Everett. One of ordinary skill in the art would have been motivated to employ a binder in order to enhance the strength of the tissue which is wrapped

around the absorbent core of Everett et al. . With regard to the limitation that the wrapper comprises a mixture of absorbent material and binder, since GB '648 teaches coating a wrapper with the binder, the wrapper would comprise both elements, and would thus inherently comprise a mixture of the two.

5. Claims 15, 34, 35-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Everett in view of GB 1,231,648 as applied to claims 1-14, 16-33 above, and further in view of Rosch et al, U.S. Patent No. 6,009, 558. Neither Everett nor GB'648 teach swimwear incorporating an absorbent material. Rosch teaches that swimwear may be formed so that it incorporates an absorbent core. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated an absorbent core as taught by Everett into the swimwear of Rosch. One of ordinary skill in the art would have been motivated to employ the absorbent core of Everett because it is disclosed as having excellent liquid absorbing and holding properties.

6. Applicant's arguments filed 11/12/03 have been fully considered but they are not persuasive. Applicant argues that Putzier does not anticipate the claims because it does not disclose that the binder comprises a mixture of binder and absorbent material. However, a mixture is simply a combination of two or more elements. The claims do not recite the structure of the wrapper in terms of how the binder and absorbent relate to each other. Applying a binder to a nonwoven would result in a material which was a mixture of the fibers of the nonwoven and the binder.

7. With regard to the combination of Everett in view of GB '648, Applicant argues that the references teach away from the proposed combination because it would be

illogical to include one layer of the biodegradable material of GB '648 in the multi-layer material of Everett because the layers of Everett are not biodegradable and would prevent a user from disposing of the product in a biodegradable manner as taught by GB '648. However, the binders disclosed for use with the nonwoven wrapper or topsheet in GB '648 are disclosed as being soft and non-irritating. Therefore, one of ordinary skill in the art would have been motivated to employ those binders in the absorbent material of Everett. The fact that the binders of GB '648 are biodegradable would be a positive, because it would enable at least some of the material of Everett to degrade and/or disintegrate. Further, In response to applicant's argument that it would not have been obvious to have incorporated a layer of GB '648 into Everett, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Thus, in the instant case, the rejection does not call for incorporating a layer of GB '648 into Everett, but merely states that since GB '648 teaches non-irritating binders for use in absorbent articles, it would have been obvious to have used those binders in the absorbent article of Everett in order to enhance the strength of the topsheet of Everett.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (571) 272-0994.

The fax number for all official faxes is (703) 872-9306.


Elizabeth M. Cole
Primary Examiner
Art Unit 1771

e.m.c